

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1499 of 1983

WITH

FIRST APPEAL NO.31 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

and

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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MAHARAJA SHRI HAMIRSINHJI, DECDTHRO'HEIR PRATAPSINH HAMIRSINH

Versus

STATE OF GUJARAT

Appearance:

1. First Appeal No. 1499 of 1983
MR BG PATEL for Petitioner No. 1
MR HC PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE H.K.RATHOD

Date of decision: 05/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. These two appeals, one by the original claimant and another by the original opponent, are directed against the judgment and order dated January 28, 1983 passed in Land Acquisition Case No. 14 of 1981 by the learned Assistant Judge, Sabarkantha at Himatnagar, whereby the compensation was awarded to the original claimant at the rate of Rs.12/- per sq.mt. being the market price of the land under acquisition and, thus, allowing additional compensation of Rs. 76,820/- inclusive of solatium. As the original claimant had claimed Rs. 1,79,014/- before the reference Court and since the Tribunal awarded Rs. 76,820/-, the appellant in First Appeal No. 1499 of 1983 has restricted his claim to Rs.75,000/- while the appellant State of Gujarat in First Appeal No. 31 of 1984 has challenged the award of Rs. 76,820/- in favour of the original claimant.

2. A proposal to acquire the land of private ownership of Vijaynagar town was received from the Executive Engineer, R. & B., Himatnagar dated 31.1.1977 by Collector, Sabarkantha. Accordingly, the Special Land Acquisition Officer, by his letter dated 22.2.1977 initiated further proceedings in the matter. The notification under section 4 of the Land Acquisition Act, 1894 was published in Govt. Gazette on 8.2.1979 while the notification under section 6 of the Act was published in the Govt. Gazette on 27.12.1979. Notices under section 9 of the Act were issued to the affected persons on 28.8.1980. The said notifications were issued for the acquisition of land for the purpose of construction of Idar Vijaynagar Rani road. As far as the present appeals are concerned, we are concerned with survey no. 371 of the ownership of Maharaja Shri Hamirsinhji Hindusinhji who had claimed compensation at the rate of Rs. 3/- per sq.ft. and in all, Rs. 3,05,285/- before the Land Acquisition Officer. The Land Acquisition Officer in Land Acquisition Case No. 14 of 1981, after considering various sale instances, awarded compensation for the village site of Gamtal land of survey no. 371 at the rate of Rs. 2/- per sq.ft. and awarded the compensation of Rs.14500/-. At the instance of the claimant, reference under section 18 was made to the District Court claiming additional compensation of Rs. 1,79,014/- including solatium at the rate of 15%.

3. In the written statement Ex. 15 filed by the State, while denying the claim of the claimant for additional compensation, it was contended that the award

passed in favour of the claimant is just and proper.

4. The reference Court, after appreciating oral evidence as well as various sale instances produced before it, came to the conclusion that the compensation awarded by the Land Acquisition Officer was inadequate and, therefore, awarded additional compensation of Rs. 76,820/-. Hence the present appeals.

5. For the purpose of establishing the claim, the claimants have examined Bhavansinhji Hindusinhji, Ex.31, another brother of Maharaja and also the power of attorney holder of Maharaja. The other witnesses examined are Haribhai Patel, Ex. 22, brother of Maharaja Jashwantsinhji Hindusinhji, Ex. 26, Khalabhai Nathabhai Patel Ex.50, Manilal Kalulal Gamath Ex. 53, Babula Poonamji Darji Ex. 56 and Joitaram Pandya Ex. 59. We have perused their evidence produced on the record of the case.

6. The reference Court, while arriving at the market rate of the land under acquisition, has followed the judgment rendered by this Court in the case of Manek Jamshedh Ratanshah Gheyara Vs. Special Land Acquisition Officer, Surat, 22 GLR 829. In the said case, this Court has laid down guidelines for fixation of compensation by observing as under:

"The valuation of the land, if instances method is adopted, has to be made by correlating the market value reflected in the most comparable genuine instance. Taking into consideration the plus and minus factors pertaining to the land under acquisition as compared to the land under instance which is treated as norm providing the index of the market value on the date of issuance of notification under sec.4, the valuation has to be made after making suitable adjustments by loading or unloading the price reflected in the instance taken as norm to account for plus or minus factors.

Some of the plus factors are smallness of size, proximity to a road, frontage on a road, nearness to developed area, regular shape, level, vis-a-vis land under acquisition and special value for an owner of an adjoining property to whom it may have some very special advantage. Some of the minus factors are largeness of area, situation in the interior at a distance from the road, narrow strip of land with very small frontage compared to depth, lower lower level

requiring the depressed portion to be filled up, remoteness from developed locality and some special disadvantageous factor which would deter a purchaser. Valuation in every case has to be made bearing in mind all the relevant factors as a prudent purchaser of land would do in which position the Judge making valuation must place himself by making an approach informed with commonsense."

The reference Court, after following the said decision, rightly took into consideration the post notification sale instances for fixation of market price of the land under acquisition. They are sale instances Ex. 44, 52 and 55. We are in total agreement with the reasonings given by the reference Court for taking into account the said three sale instances as they are relevant sale instances for determining the market price of the land under acquisition. Therefore, it is not necessary for us to consider other sale instances produced by the witnesses. In our opinion, the sale instances Ex. 44, 52 and 55 are proximate and relevant for the purpose of determining market value prevailing on the date of notification under section 4 of the Act. The sale instances Ex. 52 and 55 show that the purchaser had paid Rs. 27/- per sq.mt. These sale instances have been produced by Khalabhai Nathabhai Patel Ex. 50 and Manilal Patel at Ex. 53. Bhavansinhji, Ex.31 who is the power of attorney holder of Maharaja has produced sale instance at Ex. 44. As per his evidence, in 1976-77, one Vajechand Jain had purchased the land from Maharaja on 18.11.1976. He had sold the land at the rate of Rs. 37/- per sq.mt. The sale was registered on 14.12.1976. In other words, the lands were sold three years prior to the acquisition of land. From the evidence on record, it appears that the land sold vide Ex. 44 was a Garthari land and, therefore, it was bound to be a good land and likely to fetch handsome price. The reference Court, after taking into consideration the sale instances Ex. 44, 52 and 55, observed that the lands sold vide Ex. 52 and 55 were sold at the rate of Rs. 27/- per sq.mt. as these lands were in small pieces while the lands sold vide Ex. 44 were sold at the price of Rs. 37/- per sq.mt. as the same was Garthari land. Therefore, according to the reference Court, balance was required to be struck considering the proximity of land under acquisition. As far as the land under acquisition is concerned, the same is somewhat uneven land. In other words, the land is higher at the ground level to such an extent that 10 meters of land was required to be dug out for the purpose of making it even land. We have perused

the report of the Addl. Collector about the land under acquisition which was also relied upon by the Special Land Acquisition Officer. It is inter alia stated that the land under acquisition i.e. survey no. 371 is situated in totally undeveloped area. After the merger of Vijaynagar State, no construction whatsoever has taken place. The land is in hilly area. The lands adjacent to the land under acquisition are agricultural lands. However, no development has taken place on the land under acquisition. The land has not been used for the residential, agricultural or any other purpose. The acquiring body has made the land under acquisition an even land. It is situated one k.m. away from the village site land. In future, no development is possible. In view of this, the reference Court slashed down the price of the land under acquisition at the rate of Rs. 12/- per sq.mt. Considering the reasonings given by the reference Court, we are in total agreement with the said reasonings and we are also of the view that no exception can be taken thereof.

7. Learned advocate Mr. B.G. Patel, appearing for the claimant submitted that the reference Court has committed an error by fixing the market rate of the land under acquisition at Rs. 12/- per sq.mt. In the submission of learned advocate, slashing down of the price from Rs. 27/- to Rs. 12/- per sq.mt. is wholly unjustifiable. It is submitted that it is not correct to say that the potentiality of the land will not be changed in future. After having carefully examined the material on record and especially the report referred to above, we are clearly of the opinion that the land has remained as it is right from the merger of the State and there is no likelihood of any development of the said land and, therefore, there cannot be a better price of the land under acquisition than what has been awarded by the reference Court. We, therefore, see no merit in this submissions advanced by the learned advocate for the claimant.

8. Learned AGP Mr. H.C. Patel has also not made out any case warranting interference in the judgment rendered by the reference Court. Accordingly we see no merit in the appeal preferred by the State. In view of this, we confirm the amount of compensation of Rs. 76,820/- awarded by the reference Court.

9. Learned advocate for the appellant, however, submitted that the claimants are entitled to solatium at the rate of 30% and not at the rate of 15% and interest at the rate of 9% per annum from the date of taking over

possession and not at the rate of 4.5% as awarded by the reference Court. He invited our attention to sections 23 and 28 of the Land Acquisition Act, 1894. Section 23 provides for matters to be considered in determining compensation. Subsection (2) which is relevant for our purpose reads as under:

"23(2): In addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum on such market value in consideration of the compulsory nature of acquisition."

(30% has been substituted by Act No. 68 of 1984).

Likewise, section 28 authorises the Court to direct the Collector to pay interest on excess compensation. It provides that if the sum in the opinion of the Court, the Collector ought to have awarded as compensation in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of 9% per annum from the date on which he took possession of the land to the date of payment of such excess into the Court. (9% interest rate is also substituted by Act No. 68 of 1984).

10. As laid down by the Apex Court in the case of Union of India Vs. Raghuvirsinh, AIR 1989 SC 1933, the benefit of the Amended Act as per section 30(2) of the Act No. 68 of 1984 will be available in respect of award made by the Collector or of the Court rendered between 30.4.1982 and 24.9.1984. Likewise, the benefit of enhanced solatium is extended by section 30(2) to the cases of an award made by the Court between 30.4.1982 and 24.9.1984. Even though it be upon the reference from an award made before 30.4.1982. As far as the facts on hand are concerned, the reference Court has passed the judgment on 28.1.1983 and, therefore, the law laid down in the case of Raghuvirsinh (supra) squarely applies to the present case. In view of this, we hold that the claimant shall be entitled to solatium on the amount of compensation of Rs. 76,820/- at the rate of 30% and he shall also be entitled to interest at the rate of 9% per annum from the date of taking over possession on the amount of compensation as well as on solatium. It is, however, clarified that the additional amount of solatium and the additional amount of interest shall be calculated on the difference between the amount awarded by the Special Land Acquisition Officer and the reference Court.

11. First Appeal No. 1499 of 1983 is accordingly partly allowed as far as the amount of solatium and interest is

concerned while the First Appeal No. 31 of 1984 is dismissed. The amount shall be deposited before reference Court within eight weeks. No order as to costs.

(Kshitij R.Vyas, J.)

(H.K.Rathod, J.)

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